

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
KOOTENAI RIVER BASIN (76D)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Virginia Moen

OBJECTOR: United States of America (USDA Forest Service)

CASE 76D-0218-R-2022

76D 128842-00

76D 211851-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Statement of the case

The United States of America (USDA Forest Service) (“USDA Forest Service”) filed objections to the place of use and point of diversion of the above captioned claims.

On July 3, 2023, the parties filed a Stipulation to Resolve Objections.

Issue

Should the court accept the stipulated terms?

Findings of fact

The historical point of diversion and place of use identified by mining claim 76D 128842-00 and industrial claim 76D 211851-00 should be refined and reduced as stipulated to by the parties.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. Prima facie proof may be overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. Settlement, including the documents filed by a claimant where the claimant is the only party, is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

4. The Water Court may accept a settlement agreement that reduces or limits an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

Analysis

Acceptance of stipulated terms

The parties stipulated to the refinement and/or removal of a legal land description from the point of diversion and the place of use for claims 76D 128842-00 and 76D 211851-00.

Conclusions of law

The evidence entered into the record is a reduction within the parameters of statement of claim 76D 128842-00 and its implied claim, claim 76D 211851-00; justifies the modifications to the claims; and resolves the USDA Forest Service's objections to the claims. The stipulated terms should be accepted by the court.

Recommendations

Mining claim 76D 128842-00 and industrial claim 76D 211851-00 should be modified as follows to accurately reflect historical use.

POINT OF DIVERSION:

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SENE		19	31N	34W	LINCOLN

PLACE OF USE:

<u>ACRES</u>	<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
		E2	19	31N	34W	LINCOLN
		W2	20	31N	34W	LINCOLN
		NE	20	31N	34W	LINCOLN
			30	31N	34W	LINCOLN ¹
		NWNW	29	31N	34W	LINCOLN
			32	31N	34W	LINCOLN

¹ The Stipulation includes a clerical error, underlining instead of striking through Section 30, Township 31 North, Range 34 West, Lincoln County.

Add Remark:

THE POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY WITHIN MS 8112, 8113, 5326, AND 5327 A&B.

Post Decree Abstracts of Water Right Claim accompany this report to confirm implementation of the recommendations in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

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Service via Electronic Mail

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 128842-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: VIRGINIA MOEN
PO BOX 973
LIBBY, MT 59923 0973

Priority Date: DECEMBER 31, 1904

Type of Historical Right: USE

Purpose (use): MINING

THIS RIGHT IS INCIDENTALLY USED FOR COMMERCIAL, INDUSTRIAL, FIRE PROTECTION AND DOMESTIC TO OPERATE A MINING FACILITY.

***Flow Rate:** 224.40 GPM

***Volume:** 362.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: CALLAHAN CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENE	19	31N	34W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: MULTIPLE

INSTREAM USE AND PUMP.

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			E2	19	31N	34W	LINCOLN
2			W2	20	31N	34W	LINCOLN
3			NWNW	29	31N	34W	LINCOLN

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

128842-00 211851-00

IMPLIED CLAIM NO. 76D 211851-00 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

THE POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY WITHIN MS 8112, 8113, 5326, AND 5327 A&B.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 211851-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: VIRGINIA MOEN
PO BOX 973
LIBBY, MT 59923 0973

Priority Date: DECEMBER 31, 1904

Type of Historical Right: USE

Purpose (use): INDUSTRIAL
THIS RIGHT IS INCIDENTALLY USED FOR DOMESTIC PURPOSES.

Flow Rate: 44.88 GPM

Volume: 72.00 AC-FT

Source Name: CALLAHAN CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENE	19	31N	34W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP
INSTREAM USE AND PUMP

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			E2	19	31N	34W	LINCOLN
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Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

128842-00 211851-00

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 76D 128842-00.

THE POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY WITHIN MS 8112, 8113, 5326, AND 5327 A&B.